

Latest Notes

[REDACTED]	
-Keith Merkel (06/10/2020 10:05 AM)	
Examiner Comment	
[REDACTED]	
-Nicole Cedarleaf (06/08/2020 1:23 PM)	
Additional Investigation Needed	
<p>Keith - while Home Office is reviewing coverage issue for this claim, please complete the following investigation: we need the police report and recorded statements from witnesses (did anyone see claimant jump off boat and if so, did they warn our Insured?), we need r/s from Mike if he'll allow it - get contact info from Frank - regarding ownership of boat, insurance (boat, HO, etc.), insurance carriers, did he notify carriers, all meds after hospital stay and current meds (last treatment, still treating, prognosis), surveillance should be considered especially now that the weather is nice and quarantine restrictions are loosening up. Has Frank seen the claimant? Still friends, boating together, etc.? The demand package was received 1/14/20 and was not summarized in the file - this should be done and current demand noted. Did we request authorizations or have we just relied on meds received from claimant attorney? Let's try to get up to speed on the needed investigation. Thank you!</p>	
-Albert Chan (06/08/2020 10:57 AM)	
Coverage Recommendation	
<p>Nicole, I am referring file to Home Office for review on coverage. Based on recent information confirming that Insured, Frank McKay is a co-owner of the boat that was involved in this loss, we believe liability exclusion 6 c.1 and 3 apply as the inboard motor on this pontoon boat is 130 horsepower which exceeded the max. limit of 75 horsepower for liability coverage. Original investigation suggested that Mike (Insured's brother) owner of this boat does not have any applicable insurance for this loss however we will need to verify. Although we clearly has a reason to deny liability coverage, I am concern that it is happening almost 2 years after the loss. There is no reason why we would have known that our Insured also owns the boat however one can argue that we didn't ask the right questions either. If we do provide liability coverage on this loss,</p>	
[REDACTED]	

-Albert Chan (06/08/2020 9:38 AM)

### Homeowners Liability Coverage Roadmap

1. Is the person or entity seeking coverage an insured? Yes - NI Frank McKay 2. Is the loss an occurrence or an offense? Occurrence 3. Are the damages sought because of BI or Property damage, Personal and Advertising Injury, or Medical Payments as described in the insuring agreements? BI and MP 4. Did the BI or Property damage occur, or was the Personal and Advertising Injury offense committed during the policy period and within the coverage territory? Yes - within the United States 5. Do any exclusions or extensions eliminate or give back coverage? Yes : Home and Family Liability Protection - Section II: under the Exclusions what we do not cover, page 18: 6. c. 1) and 3) 6. Do any endorsements add back, eliminate, enhance, or limit coverage? No 7. Are the policy conditions complied with? Yes CONCLUSION - Erie Policy: excludes liability protection for watercraft as per exclusion 6. c. 1) and 3).

-Keith Merkel (06/05/2020 3:41 PM)

issuing streetdelivery \$90.00 payment  
\$ccDocLink(288656023)

-Keith Merkel (06/05/2020 3:35 PM)

### Boat Inspection

The inspection shows this is a pontoon boat with single motor. It has an inboard outdrive with 130 horse power motor. The two pontoons are 27' 10" long, the rear extends the back of the pontoon by 14" making the total length of the boat 29'.\$ccDocLink(288654454)

-Keith Merkel (06/05/2020 3:17 PM)

### Requested StreetDelivery inspection of boat

Need to Know: how many motors does the boat have and are they an inboard or inboard-outdrive and how many horsepower of each (if more than one)? What is the length of the boat?

-Keith Merkel (06/03/2020 8:20 AM)

Title is in both Michael and Frank McKay's name

1988 Harri Boat is titled to both Michael McKay and Frank McKay\$ccDocLink(288382155)

-Keith Merkel (06/03/2020 8:11 AM)

I will request boat inspection after getting title

In order to send StreetDelivery to inspect the boat, I will need year, make and model. I spoke to Frank and he does not recall off hand but said that will be on the title. I said I will request the boat inspection after he sends me the picture of the title, he understands.

-Keith Merkel (06/02/2020 3:51 PM)

spoke to Frank McKay, he will get title and ok to have boat inspected  
boat is at his mother's house at 5692 McClelland Drive, Auburn NY 130221. He asked the inspector call him first so he can call his mother and let her know someone is coming out to look at the boat. best# 315-409-3753 - ok to leave vm if he does not answer. Assigning StreetDelivery to perform inspection.

-Keith Merkel (06/02/2020 3:31 PM)

spoke to Robin McKay and she will ask Frank McKay to call me  
in regards to boat ownership. Additionally, need to have the boat inspected.

-Keith Merkel (06/02/2020 3:09 PM)

left vm message for Robin McKay asking she or Frank McKay call me

I have not received response to my prior messages for the phone number for Frank. This vm verifies it is "Robin"s. Asked she or Frank call me. If no response, sending cooperation letter. need to have the boat inspected to see if any exclusion for watercraft may apply.

-Keith Merkel (06/02/2020 1:31 PM)

IR check on Boat Ownership: Michael and Frank McKay

per information request, both the NI and his brother are owner. I dont believe we can hold the NI brother responsible for the NI driving of the boat when the NI owns it (even partially).

-Keith Merkel (06/02/2020 1:20 PM)

Regarding Home Office Referral

Keith, once you have obtained the additional information needed per your case conference on 5/27, you will need to prepare a detailed recommendation note outlining the coverage, loss description, liability, damages and reserve recommendation. I will await your detailed recommendation note prior to making the referral. Please complete by 6/12 or at least provide an update. Thanks.

-Albert Chan (06/01/2020 10:59 AM)

IR: boat is registered to Michael and Frank McKay  
\$ccDocLink(287942647)\$ccDocLink(287942652)

-Keith Merkel (05/29/2020 3:28 PM)

REQUESTED POLICE REPORT  
FROM AUBURN CITY POLICE

-Keith Merkel (05/28/2020 2:13 PM)

Keith, please order police report on the loss details screen, the driver was arrested for dui so there should be a report, the pr should have the boat information including a vin # -will then have to run an IR search on that VIN to check for any other insurance -when we have this information, will need to be outlined for home office examiner

-Brian Weber (05/28/2020 2:11 PM)

CC Results:

- Home Office Referral

Met with Case Conference committee: Karen Pifer, Chris McDermott, Karen Corral, Brian Weber and Duane Edmunds. It was decided that we need to determine who owns the boat, I have run information request on both Michael and Frank McKay to see if boat is registered to either as per NY State requirements.

However, finding out who owns the boat could have bearing on the amount of liability on the insured - if the NI is the owner, more liability, if the NI brother, Michael McKay, there would be less. However, it was agreed that the value and, as such, the file should be converted to home office. Current reserve is Once ownership is assessed, the reserve should be reviewed by HOE, my supervisor and myself.

-Keith Merkel (05/27/2020 12:14 PM)

boat owners must register boat per NY State  
running information to see if either Michael or Frank McKay registered a boat. Unfortunately, do not have vin of boat.

-Keith Merkel (05/27/2020 12:04 PM)

Claim: A00001222478

Left insd another ans mach msg  
asked he call me in regards to this claim. Boat Ownership? BWI charges?

-Keith Merkel (05/21/2020 9:59 AM)

Case Conference - Rescheduled

This matter has been placed on the 5/27/20 case conference schedule per your request. K Corral

-Karen Corral (05/14/2020 1:50 PM)

Case Conference Request

Karen, Please reschedule case conference to 5/27/20. Conferencing for Liability and BI Value.

-Albert Chan (05/14/2020 11:29 AM)

mailed dictated letter

mailed dictated letter dated 5/12/20; cc: file.

-Aimee Nothnagle (05/12/2020 9:50 AM)

Rewquested Final Print on Letterhead job# 562073

denial letter as med pay is exhausted

-Keith Merkel (05/11/2020 3:18 PM)

Dictated rough draft denial for medical invoice(s)-med pay exhausted

as rough draft priority, job 1378554

-Keith Merkel (05/08/2020 5:24 PM)

rec'd call from Auburn Hospital, they need a denial sent to them for the bill we rec'd on 03/27 .....need letter to them stating that med pay has been exhausted -sent activity to adjuster

-Brian Weber (05/07/2020 12:16 PM)

questions

Stacey from Auburn Community Hospital phone 315-255-7304 called in William Lansbury . ADV transfer live call to Brian Weber.

-Carmen Pagan (05/07/2020 12:14 PM)

90 day file review

was completed 4/27/20

-Keith Merkel (05/07/2020 8:14 AM)

#### Case Conference Response

This matter has been placed on the 5/13/20 case conference schedule per your request K Corral

-Karen Corral (04/30/2020 3:17 PM)

#### Case Conference Request

Karen. Please schedule this file for the 5/13/20 case conference, Conferencing file for BI value [REDACTED]

-Albert Chan (04/30/2020 3:03 PM)

#### Request for Case Conference

for bodily injury value. [REDACTED]

Keith

-Keith Merkel (04/30/2020 2:31 PM)

Coverage: \$1,000,000 single liability limit Liability: [REDACTED], struck 2 people in water; clmt is [REDACTED] for not notifying others he was getting off the boat and jumped in while boat was in neutral, boat is owned by NI brother who was present, he can be held liable for ownership and not permitting intoxicated brother (NI) to drive the boat [REDACTED] Exposure: Bi with [REDACTED] reserve adequate for claimant ws struck by boat propeller and has multiple lacerations up and down his left leg along with internal degloving; and a fractured big toe on left foot which required ORIF and second procedure to remove hardware. Claimant was admitted to hospital for 10 days while recovering from big toe ORIF and butterfly surgery where claimant's left leg skin was opened 21.5 x 4 inches to clean all the boat water out of his leg along with the debridement of the internal degloving. Claimant has disfigurement scar from mid thigh to nearly the ankle for the debridement and the butterfly procedure. status: put brother on notice and am awaiting response from his carrier for their liability position; then will request case conference

-Keith Merkel (04/27/2020 9:37 PM)

contacted Michael McKay & explained Notice

verified he resides at 1947 Whitehead lane, Auburn NY 13021. Sending contact letter. I explained who I was and reason i was calling. I explained he should notify any boat or home insurance about the claim so they can determine if there is coverage and/or liability. Provided him my contact information and he

sAid he will speak with his attorney. I explained I will need LOR in order to speak to his attorney. He understood.

-Keith Merkel (04/23/2020 1:31 PM)

Awaiting response to IR activity

IR has not responded to my activity. Awaiting response.

-Keith Merkel (04/23/2020 10:19 AM)

sent activity to IR unit supervisor Nicole Diley

asking she assign the information request to team member who can complete it. KBM

-Keith Merkel (04/17/2020 11:46 AM)

ran ISO search on Frank McKay - one other claim

but no identifying information for his brother Michael McKay

-Keith Merkel (04/14/2020 3:30 PM)

did not get response to last, or prior, information request

spoke with agent and obtained, DOB, Driver License Number and SS#, will request IR with this information. Attempting to identify his brother Michael McKay.

-Keith Merkel (04/14/2020 3:24 PM)

Case Conference Response

This case has been removed from the 4/15/20 case conference schedule. K. Corral

-Karen Corral (04/10/2020 7:39 AM)

Case Conference 4/15/20

Karen, Request to cancel case conference on 4/15/20. Will advise when rescheduling is needed.

-Albert Chan (04/09/2020 4:03 PM)

Claim: A00001222478

cancelling case conference - need additional information will request to be removed from the CC list.

-Keith Merkel (04/09/2020 3:32 PM)

spoke to Agent Tom Nolan about reserve increase KBM

-Keith Merkel (04/02/2020 10:19 AM)

Case Conference - Response

This case has been added to the 4/14/20 case conference schedule. K. Corral

-Karen Corral (04/01/2020 2:03 PM)

Medical Bills & 8/12/18 Hospital Records

\$873.50 Auburn Community Hospital\$ccDocLink(283822939)

-Keith Merkel (04/01/2020 12:37 PM)

request for case conference

for BI Value [REDACTED] and involves significant disfigurement as well.

-Keith Merkel (04/01/2020 12:34 PM)

spoke to Terry and left message for Tom Nolan at the agency: reserve inc

Terry will forward message to Tom to call me.

-Keith Merkel (04/01/2020 12:31 PM)

Reserve Recommendation

Keith. Reviewed and agreed with your recommendation to increase current BI reserve [REDACTED]

[REDACTED] based on liability and injury exposure. Please notify agent of the reserve increase. Thanks.

-Albert Chan (02/28/2020 3:53 PM)

recommend increasing BI reserve to \$140k

claimant ws struck by boat propeller and has multiple lacerations up and down his left leg along with internal degloving; and a fractured big toe on left foot which required ORIF and second procedure to remove hardware. Claimant was admitted to hospital for 10 days while recovering from big toe ORIF and

butterfly surgery where claimant's left leg skin was opened 21.5 x 4 inches to clean all the boat water out of his leg along with the debridement of the internal degloving. Claimant has disfigurement scar from mid thigh to nearly the ankle for the debridement and the butterfly procedure. In regards to evaluation, this is how I see value: Lacerations requiring butterfly procedure and debridement for the degloving and lymphoedema (may or may not be permanent): [REDACTED] Big Toe 2 surgeries for ORIF and hardware removal: \$ [REDACTED] Disfigurement: \$ [REDACTED] I have a range of \$ [REDACTED] Total Value I could see claimant being [REDACTED] liable for the loss so range of got into water while the boat motor was in neutral without telling anyone. \$ [REDACTED] after applying comparative liability I would recommend reserve of \$ [REDACTED] at this time

-Keith Merkel (02/28/2020 3:35 PM)

left vm message on RObin McKay vm asking Frank McKay to call me  
-need brother address, phone number.

-Keith Merkel (02/28/2020 3:34 PM)

spoke to BI Attorney Jan Smolak

we discussed whether the lymphoedema was permanent and if so, need something from doctor on this. He will ask client to see Dr Sullivan. We discussed Mike McKay as the boat owner but Jan did not know if he has insurance. I said that as he is the boat owner, need to determine who provide primary coverage. Jan is not sure if boats have to abide by NY VTL 388 (owner being negligent for use of the vehicle) but would have to check on this. I said that is not the only issue as Mike was present when the incident occurred and he was permitting his brother to drive the boat when he was intoxicated. I said I would put Mike McKay on notice.

-Keith Merkel (02/28/2020 3:31 PM)

traded vm with attorney - items looking for:

Jan Smolak left vm for me, returning my call. I called back and got his vm. I left message asking about the lymphoedema as to whether there was any documentation on the permanency of the condition. I also asked if a claim for Mike McKay was ever set yup.

-Keith Merkel (02/28/2020 2:59 PM)

left attorney vm - im new adjuster; mike McKay Insurance (bot owner)?

Question: how long will the lymphedema affect Mr Lansbury?

-Keith Merkel (02/27/2020 11:34 AM)

CLM30 SENT 12/12, NEXT DELAY NOT DUE UNTIL 4/24  
LAST DELAY LETTER SENT 1/27/20

-Keith Merkel (02/03/2020 3:25 PM)

90 Days: Reserve, Delay Letter and Demand  
reserve at [REDACTED] based on injuries known to date (ORIF and degloving)- sent letter to atty to provide update on treatment sending ca14 delay letter documenting receipt of demand  
-Keith Merkel (01/27/2020 9:39 AM)

K3883 Reassigned File Review and Plan

Policy: ErieSecure Home Insurance DOL: 8/2/18 Venue: Cayuga County - Neutral Coverage: \$1,000,000  
single liability limit \$1000 medical payment Assessment: No coverage issues, ERIE Policy will provide primary liability protection Open Exposures: 1 – BI: William Lansbury Liability: [REDACTED] insured Injury: Lacerations - ORIF great toe proximal phalanx and internal degloving wound involving skin on leg MSP: NOT Medicare eligible Lien: ? Attorney: Jan Smolak of Michaels and Smolak, PC Risk Report: NA Delay Letter – Last: 10/29/19 Next: 1/25/20 Plan: 1. Send change of adjuster letter to Erie insured and claimant attorney 2. prior adjuster requested demand package from attorney. Once received, review and case conference due to the degloving and ORIF. 3. Set activity for next delay letter  
-Keith Merkel (12/06/2019 11:25 AM)

Contact

Contact = Contact not necessary

-Keith Merkel (12/06/2019 11:24 AM)

Contact

Contact = Contact not necessary

-Keith Merkel (12/06/2019 11:24 AM)

Reassignment

Keith, please take over handling of claim.

-Albert Chan (12/06/2019 9:40 AM)

sent out 90 day delay ltr  
reserve at [REDACTED] liab accepted, sent letter to atty to provide demand package

Claim: A00001222478

-Brian Weber (10/29/2019 2:47 PM)  
called atty office, transferred to atty jan vm- lvmom to call in w/update  
-Brian Weber (10/29/2019 2:45 PM)

sent out 90 day delay ltr

reserve at [REDACTED] based on injuries known to date (ORIF and degloving)- sent letter to atty to provide update on treatment

-Brian Weber (08/01/2019 12:58 PM)

left message for atty to call in w/update

-Brian Weber (08/01/2019 12:57 PM)

issued check in amount of 1000

payable to william Lansbury per vm from attorney -oop bills are more than limit

-Brian Weber (05/03/2019 3:24 PM)

sent out 90 day delay ltr

reserve at [REDACTED] based on injuries known to date- sent letter to atty to provide update on treatment- med pay at 1000 per max on policy- asked atty to call and let me know where to send the med pay check

-Brian Weber (05/03/2019 2:56 PM)

called and lvmom w/atty

wanted to know how he would like the check for med pay sent out as there is more than 1000 outstanding in med bills and asked for update on treatment

-Brian Weber (05/03/2019 2:54 PM)

took r/s of insured

insured stated they were driving back from boating and were about 300 yards from the dock, he said his brother Mike saw a football in the water and wanted to get it, so he put the boat in idle, didn't turn the engine off, his brother got in the water and he turned the boat around 180 degrees to keep watching him, his brother got back in the boat, so he turned boat back around the other way, his brother mike stated that "we are good to go", he started going forward when he heard a thump, stopped the boat and realized the boat had hit Mike's wife Amy and Mike's friend William- they brought them on the boat and went to shore to call police-there were 11 people total on the boat and they all boat together often- no one on the boat heard or saw the two get off the boat, they weren't supposed to since they were so close to dock and his brother was just jumping off to get the football- he thinks they went in to go to the bathroom- neither could state exactly what happened and his sister in law still doesn't know\$ccDocLink(249152735)

-Brian Weber (02/22/2019 2:06 PM)

RCVD call from Auburn Community Hospital  
 RCVD call from Auburn Community Hospital, spoke with Diane, 315-567-0419 \*Inquiry if Medical was open and active\* -Stated yes-  
 -Amanda Stearns (02/12/2019 1:32 PM)

sent out 90 day delay ltr  
 reserve at [REDACTED] based on injuries known to date- sent letter to atty to provide update on treatment  
 -Brian Weber (02/06/2019 4:14 PM)

sent letter to insured  
 have statement from insured robin but need one from frank as well  
 -Brian Weber (02/06/2019 4:12 PM)

Mailed letter to Lifetime Care  
 Med bill denial dated 11/14/18  
 -Jennifer Reitano (11/15/2018 12:59 PM)

sent out 90 day delay ltr  
 reserve at [REDACTED] based on injuries known to date- sent letter to atty to provide update on treatment  
 -Brian Weber (11/14/2018 9:04 AM)

closing bi- no claim presented  
 -Brian Weber (11/14/2018 9:03 AM)

called and lvmom w/robin to have frank call in- would like r/s  
 -Brian Weber (10/26/2018 10:37 AM)

increased reserve to [REDACTED]  
 due to orif and degloving in notes below called agent Tom and went over increase  
 -Brian Weber (10/26/2018 10:35 AM)

called and lvmom w/upstate ortho that they need to bill the clmt's health care provider since this policy only has 1000 in mpc and the oop for clmt already exceeds this amount

-Brian Weber (10/26/2018 10:29 AM)

rec'd med bill w/records

ORIF great toe proximal phalanx and internal degloving wound involving skin on leg

-Brian Weber (10/26/2018 10:17 AM)

questions

Nancy called in from Upstate Orthopedic has questions about William Lansberry direction to pay ADV transfer call to supv Al Chan.

-Carmen Pagan (10/22/2018 11:56 AM)

sent letter to attorney

rec'd medical bills totaling more than the \$1000 in mpc afforded on this policy- asked atty to let me know if he wants me to pay the \$1000 directly to his client

-Brian Weber (10/16/2018 8:20 AM)

sent 2nd safe harbor to attorney

-Brian Weber (10/16/2018 8:18 AM)

Medicare Reporting

Updated stop query - no claim presented

-Albert Chan (09/24/2018 11:56 AM)

Claim: A00001222478

## Medicare Reporting

Updated stop query - safe harbor Letter sent 9/21/18

-Albert Chan (09/24/2018 11:55 AM)

sent letter to attorney

1st safe harbor

-Brian Weber (09/21/2018 3:14 PM)

rec'd lor

sent ack w/limits lvmom w/atty for inj update and msp info

-Brian Weber (09/21/2018 3:12 PM)

called insured back

I asked her to have William and Amy call me so I can go over med pay coverage with them and see if bi's being filed- also asked that she have her brother in law Michael place a claim through his home insurance carrier and have that carrier call me- she will do same

-Brian Weber (08/22/2018 10:10 AM)

## General Coverage Road Map

• Is the person or entity seeking coverage an insured? yes, named Frank McKay • Is the loss an "Occurrence" or an "Offense"? occurrence, boat accident • Are the damages sought because of "Bodily injury", "Property damage", "Personal and advertising injury" or medical payments as described in the Insuring Agreements? bi/med pay of sister in law and friend • Did the "Bodily injury", "Property damage", occur or was the "Personal and advertising injury" offense committed during the policy period and within the "Coverage territory"? yes, 07/13/18-07/13/19 • Do any exclusions or extensions eliminate or give back coverage? no, watercraft exclusion wouldn't apply since our insured does not own the boat • Do any endorsements add back, eliminate, enhance or limit coverage? no • Are the conditions complied with? yes

-Brian Weber (08/22/2018 9:58 AM)

no contact info

per insured, no claim presented Contact = Contact Completed

-Brian Weber (08/22/2018 9:28 AM)

no contact info

Claim: A00001222478

per insured, no claim presented Contact = Contact Completed  
 -Brian Weber (08/22/2018 9:28 AM)

initial contact- r/s taken

insured stated she was a passenger in a 28 foot Harris Pontoon Boat owned by Michael McKay (insured's brother), driven by Frank McKay- about 6:15pm, 11 people on board, heading back to shore, they saw a football in the water ahead, Michael McKay wanted to get it so they stopped the boat so he can jump in water and get it- at the same time Michael's wife Amy McKay and there friend Bill Lansbury went in the water to go to the bathroom unbeknownst to the rest of the boat, they were only parked a couple minutes, Michael came back on the boat and stated that they are all set, so Frank started the motor and then heard something and immediately stopped the engine- Amy and Bill were in the water right next to the motor and were injured- Amy had lacerations on her arm and sustained a broken thumb, Bill had leg lacerations and broke a toe- both are recovering okay- police came to scene and driver Frank charged with boating while intoxicated, both people injured were both drinking as well- Michael McKay doesn't have a boat policy, but does have home insurance, claim not presented yet- went over process/ need to look to see if covered

Contact = Contact Completed

-Brian Weber (08/22/2018 9:20 AM)